

The Honorable John C. Coughenour

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

Somerset Communications Group, LLC, a
Washington limited liability company,

Plaintiff,

v.

Wall to Wall Advertising, Inc., a Delaware
Corporation; Donald E. MacCord Jr. and
Andrea MacCord, individually and as a
marital community; Shannon Doyle and
Tracey Z. Doyle, individually and as a
marital community; S.D. Doyle, Ltd., a
Maryland corporation; and Fourpoints
Holding, LLC, a Delaware Limited Liability
Company,

Defendants.

NO. 2:13 cv 02084 JCC

Proposed Pretrial Order

JURY DEMAND

JURISDICTION

Jurisdiction is vested in this court by virtue of federal question jurisdiction under 28 USC §1331 for claims of the sale of securities in violation of the Securities Exchange Act of 1934, 15 U.S.C. §78j(b) and §78t(a) and 17 C.F.R. §240.10b-5, and supplemental jurisdiction under 28 U.S.C. §1367 for violations of the Securities Act of Washington, RCW 21.20 et seq., arising from the same nucleus of operative facts forming the same case or controversy under Article III of the United States Constitution.

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TACEY GOSS P.S.
330 112th Avenue NE, Suite 301
Bellevue, WA 98004
Office 425.489.2878 - Facsimile 425.489.2872
WWW.TACEYGOSS.COM

CLAIMS AND DEFENSES

Somerset Communications Group, LLC (hereinafter "Somerset") will pursue the following claims:

1. That Defendants violated the Securities Exchange Act of 1934, 15 U.S.C. §78j(b) and §78t(a) and 17 C.F.R. §240.10b-5, and/or the Securities Act of Washington, RCW 21.20 et seq., by knowingly and intentionally making false or misleading material representations to Somerset in the sale and purchase of securities;

2. That Defendants violated the Securities Exchange Act of 1934, 15 U.S.C. §78j(b) and §78t(a) and 17 C.F.R. §240.10b-5, and/or the Securities Act of Washington, RCW 21.20 et seq., by knowingly and intentionally omitting or concealing material facts from Somerset in the sale and purchase of securities;

3. That Defendant S.D. Doyle Ltd. is liable for the wrongful acts of its principle and agent, Shannon D. Doyle.

4. That the MacCord and Doyle marital communities are liable for wrongful acts of Donald E. MacCord Jr. and Shannon D. Doyle.

Defendants will pursue the following defenses:

1. Plaintiff did not make any untrue statements or omissions of material facts.
2. Plaintiff did not reasonably rely on the alleged material misstatements or omissions.
3. Any alleged misstatements or omissions were not material.
4. Plaintiff's loss, if any, was not caused by any misrepresentation or omission by Defendants.
5. Defendants did not act with the requisite scienter, intentionality, or reckless disregard in the commission of any misstatements or omissions.
6. Defendants were not the cause or proximate cause of any damages suffered by Plaintiff.

7. Plaintiff's damages, if any, are speculative.
8. Plaintiff was fully aware of and assumed the risk of loss associated with the purchase of securities.
9. Defendants had no duty to disclose the information that was allegedly omitted.
10. Plaintiff's claims are barred under the defense of due diligence.
11. Plaintiff's claims are barred under the "Bespeaks Caution" Doctrine.
12. Plaintiff's claims are barred by the doctrines of estoppel and laches.
13. Plaintiff's claims are barred by the doctrine of *in pari delicto* and unclean hands.
14. Plaintiff failed to mitigate its damages, if any.
15. Plaintiff's damages, if any, are reduced to the extent Plaintiff received any tax benefit from Plaintiff's characterization of the investment.

ADMITTED FACTS

1. The units of Fourpoints Holding, LLC sold by Wall to Wall Advertising, Inc. to Somerset Communications Group, LLC were securities as defined under the Securities Exchange Act of 1934, 15 U.S.C. §78c and the Securities Act of Washington, RCW 21.20.005.

2. At all times during the offer and purchase of units of Fourpoints Holding, LLC by Somerset Communications Group, LLC, Donald E. MacCord Jr. served as Chief Executive Officer of Fourpoints Communications, LLC;

3. Donald E. MacCord Jr. materially participated in the offer and sale of Wall to Wall Advertising, Inc.'s units of Fourpoints Holding, LLC to Somerset Communications Group, LLC;

4. At all times during the offer and purchase of units of Fourpoints Holding, LLC by Somerset Communications Group, LLC, Shannon D. Doyle served as Chief Financial Officer of Fourpoints Communications, LLC;

5. Shannon D. Doyle materially participated in the offer and sale of the Wall to Wall Advertising, Inc.'s units of Fourpoints Holding, LLC to Somerset Communications Group, LLC;

6. At all times during the offer and purchase of units of Fourpoints Holding, LLC, by Somerset Communications Group, LLC, William Moore acted on behalf of Somerset Communications Group, LLC;

7. William Moore conducted six months of due diligence investigating the investment opportunity in Fourpoints Holding, LLC prior to any investments by Somerset. The due diligence included reviewing financial data, touring company headquarters, meeting with potential clients, and speaking with members of Native American tribes.

8. Somerset relied on the services of an attorney and an accountant to review all of the due diligence materials provided by Defendants.

9. MacCord and Doyle provided to Somerset and his due diligence team on December 3, 2009 *pro forma* projections that included long term debt payments to DH capital.

ISSUES OF LAW

None.

EXPERT WITNESSES

1. Each party shall be limited to one expert witness on the issues of accounting standards;

2. The name and address of the expert witness to be used by each party at trial and the issue upon each will testify is:

(a) On behalf of Plaintiff, Robert Wagner, CPA, MWL Advisory, LLC, 901 Fifth Avenue, Suite 3320, Seattle, WA 98164. Mr. Wagner will testify concerning Generally Accepted Accounting Principles, the false or misleading nature of certain

1 statements and omissions by Defendants, the materiality of certain false or misleading
 2 statements and omissions by Defendants, the mens rea of Defendants, and the reasonable
 3 reliance by Plaintiff upon the false or misleading statements and omissions of Defendants.

4 (b) On behalf of Defendants, Lorraine Barrick, CPA/ABV/CFF, ASA,
 5 CFE, 1144 Federal Ave E, Seattle, WA 98102. Ms. Barrick will testify concerning Generally
 6 Accepted Accounting Principles, the basis for preparation of financial projections generally
 7 and those prepared by Defendants, and the interpretation of financial statements prepared by
 8 Defendants. Ms. Barrick will also serve as a rebuttal witness for any testimony given by
 9 Plaintiffs' expert.

10 **OTHER WITNESSES (Plaintiff)**

11 1. William Moore

12 Mr. Moore will testify concerning Defendants and material representations and
 13 omissions in the offer and sale of securities to Somerset, and to damages.

14 2. Peter Hopper

15 Mr. Hopper will testify regarding the lack of knowledge and consent to Defendants'
 16 sale of Fourpoints Holding, LLC units to Somerset, and the performance of Fourpoints
 17 Communications, LLC;

18 3. Martin Friedman

19 Mr. Friedman will testify to the performance of Fourpoints Communications LLC and
 20 the conduct of Defendants;

21 4. Donald E. MacCord Jr.

22 Mr. MacCord will testify about Wall to Wall Advertising, Fourpoints Holding, LLC,
 23 Fourpoints Communications, LLC, and his interactions with Moore in the offer and sale of
 24 securities to Somerset;

1 5. Shannon D. Doyle

2 Mr. Doyle will testify about S.D. Doyle Ltd., Fourpoints Holding, LLC, Fourpoints
3 Communications, LLC, and his interactions with Moore in the offer and sale of securities to
4 Somerset;

5 6. Chris Walcott

6 Mr. Walcott is a possible witness only. He may testify to his interactions with
7 Defendants in assisting Moore and Somerset with the offer and purchase of securities.

8 7. Mr. Joe Mally

9 Mr. Malley will testify regarding Defendants solicitations to him to purchase
10 Fourpoints Holding, LLC units;

11 8. Mr. Fred Miller

12 Mr. Miller is a possible witness only. He may testify regarding Defendants
13 solicitations to him to purchase Fourpoints Holding, LLC units.

14 9. Jon Tompkins

15 Mr. Tompkins is a possible witness only. He may testify regarding his reliance upon
16 information from Defendants through Moore in his decision to invest in Somerset for the
17 purchase of securities from Defendants, and to damages.

18 10. Ernie Ankrum

19 Mr. Ankrum is a possible witness only. He may testify regarding his reliance upon
20 information from Defendants through Moore in his decision to invest in Somerset for the
21 purchase of securities from Defendants, and to damages.

22 11. Henry Corscadden

23 Mr. Corscadden is a possible witness only. He may testify regarding his reliance upon
24 information from Defendants through Moore in his decision to invest in Somerset for the
25 purchase of securities from Defendants, and to damages.

OTHER WITNESSES (Defendants)

1. Donald E. MacCord, Jr.

Mr. MacCord will testify regarding the allegations against him in the Complaint, including generally the due diligence performed by Plaintiff's representatives, the statements and projections prepared by Defendants, and the consent given by Fourpoints ownership to the units assigned to Somerset.

2. Shannon D. Doyle

Mr. Doyle will testify regarding the allegations against him in the Complaint, including generally the due diligence performed by Plaintiff's representatives and the statements and projections prepared by Defendants.

3. Richard Trudell

Mr. Trudell will testify regarding the relationship with the Pala Indian tribe, including communications in 2009 and 2010 that the Pala signs would be turned back on.

4. Dale Rasmussen

Mr. Rasmussen is a possible witness only. Mr. Rasmussen may testify regarding Defendants' business experience and Defendants' interactions with Mr. Moore.

5. Joe Kilkelly

Mr. Kilkelly is a possible witness only. Mr. Kilkelly may testify regarding the due diligence performed by Somerset and the knowledge that Somerset and its investors had of the investment opportunity.

6. Ernest M. Ankrim

Mr. Ankrim is a possible witness only. Mr. Ankrim may testify regarding the due diligence performed by Somerset and the knowledge that Somerset and its investors had of the investment opportunity.

EXHIBITS

(a) Admissibility stipulated:

None

(b) Authenticity Stipulated, Admissibility Disputed

Plaintiff's Exhibits

- 1 Fourpoints Communication LLC Investment Opportunity
- 2 06/11/09 Doyle Email
- 4 06/15/09 Doyle Email
- 5 Somerset Due Diligence Checklist
- 6 09/01/09 Doyle Email
- 7 09/10/09 Doyle Email
- 8 Amended and Restated Operating Agreement of Fourpoints Holding, LLC
- 9 09/30/09 Doyle Email
- 12 Pala Leases
- 13 10/02/09 Doyle Email
- 16 10/27/09 Fourpoints Communications LLC Operational Results/Projection Summary
2009-10
- 17 10/27/09 Doyle Email
- 19 12/03/09 Moore Email
- 20 Assignment of Units - Moore
- 21 Assignment of Units - Ankrim
- 22 2/03/10 Assignment of Units
- 23 2/04/10 Fourpoints Communications LLC, Operational Results 2009
- 24 02/04/10 Doyle Email
- 25 2/08/10 Doyle Email 2/8/10
- 28 06/25/2009 San Diego News Tribune Article

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34 Authenticated Pala Trust Application (available for viewing)

38 Monson & Bass Audit

41 Amended and Restated Forbearance Agreement, 3/11/10

Defendants Exhibits

A-1 William R. Moore CV

A-2 Joseph P. Kilkelly CV

A-3 11/09/2007; By-Laws of Wall to Wall Advertising, Inc.

A-4 2009; Subscription Agreement Purchase of a Membership Interest in Somerset Communications Group. LLC

A-5 2009; Somerset Communications Group. LLC Executive Summary

A-6 09/01/2009; Email from Doyle re fully signed NDA;

A-7 09/03/2009; Draft Settlement and Mutual Release of Claims

A-8 11/02/2009; Email from Doyle re Fourpoints Leases

A-9 11/17/2009; Email from Moore re Somerset Communications

A-10 11/19/2009; Email from Moore re Final Documents (Somerset Communications Group. LLC)

A-11 11/30/2009; Confidential Private Placement Memorandum

A-12 12/02/2009; Email from Moore re Somerset

A-13 12/03/2009; Email from Doyle re Tompkins Questions

A-14 12/09/2013; Email from Moore re Good News, Bad News

A-15 2010. List of Investors

A-16 12/05/2010; Email from MacCord re Somerset/Four Points

A-17 12/05/2010; Email from MacCord re Meeting tomorrow

A-18 01/06/2011; Email from Ankrim re Somerset Follow up

A-19 01/14/2011; Update on Somerset Communications Group. LLC

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- 1 A-20 03/01/2011; Memo from Moore re Somerset Communications Group. LLC /
- 2 Fourpoints
- 3 A-21 Schedule 1 Billboard Schedule
- 4 A-22 Pala Band of Mission Indians Fee-To-Trust Application for Pala Gateway Property;
- 5 A-23 04/25/2014; Defendants' Initial Disclosures
- 6 A-24 12/15/2014; Defendants' 1st Interrogatories and Requests for Production to Plaintiff
- 7 and Objections and Answers Thereto
- 8 A-25 02/06/2015; Somerset's 2nd Supplemental Responses to Defendants Discovery
- 9 A-26 02/09/2015; Defendants' 2nd Interrogatories and Requests for Production to Plaintiff
- 10 and Objections and Answers Thereto
- 11 A-27 12/9/10 email from Moore re The 4 Points Conundrum
- 12 A-28 2/18/11 email from MacCord re payment
- 13

14 **(c) Admissibility & Authenticity Disputed**

15 **Plaintiff's Exhibits**

- 16 3 Business Plan Overview
- 17 10 Pala Sign Listing
- 18 11 List of Billboards Operated and Owned by FP
- 19 14 Lease Spreadsheet
- 20 15 10/20/09 Doyle Email
- 21 18 10/27/09 Pro Forma Revenue
- 22 26 Excerpt of ¶ 3.57 of Amended Complaint
- 23 27 11/16/10 Newton letter
- 24 29 07/10/09 Hopper Email
- 25 30 07/10/09 Hopper Email
- 26 31 Pala Settlement

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1 32 09/11/09 Hopper Email
2 33 9/04/09 MacCord Email
3 35 Fourpoints Communications LLC, Operational Results/Projection Summary 2009
4 (10/13/2009)
5 36 Fourpoints Communications LLC, Operational Results/Projection Summary 2009
6 (10/13/2009
7 37 (6/25/2009) Fourpoints Communications LLC, Operational Results/Projection
8 Summary 2009
9 39 Unit Sales Chart
10 40 11/2/2009 Fourpoints Investors Update Status
11 42 Fourpoints Investors Interest Payment and Update, 4/22/10
12 43 5/18/10 Hopper Email
13
14

15 **ACTION BY THE COURT**

16 (a) This case is scheduled for trial before a jury on January 11th, 2016, 2015, at
17 9:30am.

18 (b) Trial briefs shall be submitted to the court on or before December 29th, 2015.

19 (c) Jury instructions requested by either party shall be submitted to the court on or
20 before December 29th, 2015. Suggested questions of either party to be asked of the jury by
21 the court on voir dire shall be submitted to the court on or before December 29th, 2015.

22 (d) Motions in Limine shall be submitted to the court on or before January 4th,
23 2016.

24 This order has been approved by the parties as evidenced by the signatures of their
25 counsel. This order shall control the subsequent course of the action unless modified by a
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The Honorable John C. Coughenour
United States District Judge/ Magistrate Judge

CORR CRONIN MICHELSON BAUMGARDNER FOGG
& MOORE LLP

/S/ Steven Fogg

By Steven Fogg WSBA #23528
Attorneys for Defendants
1001 4th Avenue, Suite 3900
Seattle, WA 98154-1051
206.625.8600
SFogg@CorrCronin.com